
**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**JANNETTE HERRING AND
ROBERT HERRING,**

Plaintiffs,

vs.

CASE NO. _____

**MIDLAND CREDIT
MANAGEMENT, INC.,**

Defendant.

_____ /

**COMPLAINT
JURY DEMAND**

1. Plaintiffs allege violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (“FDCPA”), the Florida Consumer Collection Practices Act, Fla. Stat. § 559.55 *et seq.* (“FCCPA”), and the Telephone Consumer Protection Act, 42 U.S.C. § 227 *et seq.* (“TCPA”).

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, 1337, 1367, 15 U.S.C. § 1692k, and 47 U.S.C. § 227(b)(3). *See Mims v. Aarow Financial Services, LLC*, No. 10-1195, 2012 U.S. LEXIS 906, 2012 WL 125429

(Jan. 18, 2012). Venue in this District is proper because Plaintiff resides here and Defendant placed telephone calls into this District.

PARTIES

3. Plaintiff, Jannette Herring is a natural person and a citizen of the State of Florida, residing in Polk County in the Middle District of Florida.

4. Plaintiff, Robert Herring is a natural person, the husband of Plaintiff, Jannette Herring, and a citizen of the State of Florida, residing in Polk County in the Middle District of Florida.

5. Defendant, Midland Credit Management, Inc. is a foreign business corporation organized and existing under the laws of the State of Kansas with its principal place of business and corporate offices in San Diego, California.

6. Defendant regularly uses the mail and telephone in a business the principal purpose of which is the collection of debts.

7. Defendant regularly collects or attempts to collect debts for other parties.

8. Defendant is a “debt collector” as that term is defined in the FDCPA and the FCCPA.

9. Defendant was acting as a debt collector with respect to the collection of Plaintiffs’ alleged debt.

FACTUAL ALLEGATIONS

10. Defendant sought to collect from Plaintiffs an alleged debt arising from transactions incurred for personal, family, or household purposes. Specifically, Defendant was attempting to collect a debt alleged to be owed by Plaintiff Jannette Herring for an alleged Chase Visa credit card (hereinafter referred to as “the alleged debt”).

11. On or about July 10, 2012, in an attempt to collect the alleged debt, Defendant began using an automatic telephone dialing system or a pre-recorded or artificial voice to place numerous telephone calls to Plaintiff’s cellular telephone at telephone number (████) █████-7672.

12. On July 11, 2012, Plaintiff provided written correspondence to Defendant. A copy of the July 11, 2012 correspondence and fax transmission verification report is attached hereto as “Exhibit A”.

13. The July 11, 2012 correspondence informs Defendant that Plaintiff is unable to pay Defendant, that Defendant is calling a cellular telephone, that such calls are billed by the minute, and instructs Defendant to stop calling.

14. Defendant ignored the July 11, 2012 correspondence and continued to use an automatic telephone dialing system or a pre-recorded or artificial voice to place numerous telephone calls to Plaintiff’s cellular telephone.

15. None of Defendant's telephone calls alleged herein were for "emergency purposes" as specified in 47 U.S.C. § 227 (b)(1)(A).

16. Defendant willfully or knowingly violated the TCPA.

COUNT I
FAILURE TO CEASE AND DESIST COMMUNICATION
IN VIOLATION OF THE FDCPA, 15 U.S.C. § 1692c(c)

17. Plaintiff incorporate Paragraphs 1 through 16 above as if fully set forth herein.

18. Defendant continued to communicate with Plaintiff with respect to the alleged debt after being notified in writing that Plaintiff wished Defendant to cease further communication with Plaintiff in violation of 15 U.S.C. § 1692c(c).

WHEREFORE, Plaintiffs request that the Court enter judgment in favor of Plaintiffs and against Defendant for:

- a. Damages;
- b. Attorney's fees, litigation expenses, and costs of suit; and
- c. Such other or further relief as the Court deems proper.

COUNT II
HARASSMENT OR ABUSE
IN VIOLATION OF THE FCCPA, FLA. STAT. § 559.72(7)

19. Plaintiffs incorporate Paragraphs 1 through 16 above as if fully set forth herein.

20. Defendant willfully communicated with Plaintiff with such frequency as can reasonably be expected to harass in violation of Fla. Stat. § 559.72(7).

WHEREFORE, Plaintiffs request that the Court enter judgment in favor of Plaintiffs and against Defendant for:

- a. Damages;
- b. Attorney's fees, litigation expenses, and costs of suit; and
- c. Such other or further relief as the Court deems proper.

COUNT III
CALLS TO CELLULAR TELEPHONE
IN VIOLATION OF THE TCPA, 47 U.S.C. § 227 (b)(1)(A)(iii)

21. Plaintiffs incorporate Paragraphs 1 through 16 above as if fully set forth herein.

22. Defendant placed non-emergency telephone calls to Plaintiff's cellular telephone using an automatic telephone dialing system or pre-recorded or artificial voice in violation of 47 U.S.C. § 227 (b)(1)(A)(iii).

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and against Defendant for:

- a. Damages;
- b. A declaration that Defendant's debt collection practices violate the TCPA;

- c. A permanent injunction prohibiting Defendant from placing non-emergency calls to the cellular telephone of Plaintiff using an automatic telephone dialing system or pre-recorded or artificial voice of the called party; and engaging in the complained of practices; and
- d. Such other or further relief as the Court deems proper.

JURY DEMAND

Plaintiff demands trial by jury.

/s/ James S. Giardina
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EXHIBIT

“A”

07/11/12

I aint got much money And
I got more important I have
to pay. And when you call my
cell phone I get billed by
the minate So dont call me
no More.

Jannette Herring
813-540~~7~~672
2028 Shephard Rd #135
Mulberry, FL 33860

J. Herring

TRG 1 MISSION VERIFICATION REPORT

TIME : 07/11/2012 07:44
NAME :
FAX :
TEL :
SER.# : F9N199960

DATE, TIME	07/11 07:43
FAX NO./NAME	8003064443
DURATION	00:01:04
PAGE(S)	01
RESULT	OK
MODE	STANDARD
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